

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

Lewis Edward Byrd, III,

Civil Action No: 17-CV-191-JDP

Plaintiff,

v.

DEFENDANT'S ANSWER

Brandon Arenz,

Defendant.

COMES NOW Defendant Officer Brandon N. Arenz ("Defendant") (Defendant's name is misspelled and stated incorrectly in Plaintiff's Complaint as 'Brandon N. Arnez'), by and through his attorneys Lind, Jensen, Sullivan & Peterson, PA, and as and for Defendant's Answer to the Plaintiff's Complaint, states and alleges as follows:

I.

Denies generally each and every allegation, matter and thing as set forth in Plaintiff's Complaint except as hereinafter admitted, answered or otherwise qualified.

II.

Upon information and belief, generally admits the allegations contained in Section A. Parties, paragraph 1 of Plaintiff's Complaint.

III.

Generally admits the allegations contained in Section A. Parties, paragraph 2 of Plaintiff's Complaint.

IV.

Denies the allegations contained in Section B. Statement of Claim of Plaintiff's Complaint as to the alleged violation of Plaintiff's asserted Fourth Amendment rights and/or that Defendant used "excessive force", and puts Plaintiff to his strict burden of proof thereof, while Defendant admits that gunshots were fired during the incident involving Plaintiff, that some of those shots struck Plaintiff's vehicle, and that Plaintiff was handcuffed during his arrest.

V.

Defendant denies the allegations contained in Section C. Jurisdiction of Plaintiff's Complaint that there was any violation of federal law under 28 U.S.C. 1331, denies using any excess force, and denies violating Plaintiff's asserted Fourth Amendment rights.

VI.

Defendant denies the allegations contained in Section D. Relief Wanted of Plaintiff's Complaint, and puts Plaintiff to his strict burden of proof thereof.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

VII.

Defendant affirmatively alleges that Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

VIII.

Defendant affirmatively alleges that Defendant's conduct did not violate the Fourth Amendment as a matter of settled law in apprehending Plaintiff who was fleeing from police officers, and where Plaintiff posed a threat to the lives of pedestrians, other motorists, and to the officers involved in the chase and arrest of Plaintiff.

THIRD AFFIRMATIVE DEFENSE

IX.

Defendant affirmatively alleges that Plaintiff's Complaint is barred as a matter of law because Defendant is entitled to "qualified immunity" for his actions.

FOURTH AFFIRMATIVE DEFENSE

X.

Defendant affirmatively alleges that Plaintiff's Complaint is barred because Defendant is entitled to statutory immunity for his actions under Wis. Stat. § 893.80(4).

FIFTH AFFIRMATIVE DEFENSE

XI.

Defendant affirmatively alleges that Plaintiff's Complaint is barred by Plaintiff's failure to serve the required notice of claim pursuant to Wis. Stat. § 893.80(1)(d).

SIXTH AFFIRMATIVE DEFENSE

XII.

Defendant affirmatively alleges that Plaintiff's claimed damages are barred and/or limited pursuant to Wis. Stat. § 893.80(3).

SEVENTH AFFIRMATIVE DEFENSE

XIII.

Defendant affirmatively alleges that Plaintiff's Complaint is barred by Plaintiff's own fault in fleeing police officers, leading police officers on a chase, and due to Plaintiff's own acts in creating a threat to the lives of pedestrians, other motorists, and the officers involved in Plaintiff's arrest.

WHEREFORE, Defendant Officer Brandon Arenz prays that Plaintiff's Complaint be dismissed with prejudice and on the merits against Defendant, and that Defendant Officer Arenz be granted judgment against Plaintiff for his costs, disbursements, fees and any other relief the Court deems just and equitable.

Dated: May 12, 2017

Respectfully submitted,

Lind, Jensen, Sullivan & Peterson
A Professional Association

By: s/Jason R. Prochnow

Jason R. Prochnow #1034213
Attorneys for Defendant
1300 AT&T Tower
901 Marquette Avenue South
Minneapolis, Minnesota 55402
(612) 333-3637
Jason.prochnow@lindjensen.com